

Representing the Communication Services Industry



Call for inputs around the extension of PhonepayPlus regulation
to remaining revenue sharing ranges
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Introduction

The [Federation of Communication Services](#) is the UK trade association for the communication services industry representing 320 companies that are delivering products and services by means of copper, broadband and spectrum. Many FCS members are OCPs who bill customers for telecoms services and a few are also TCPs. This response is drawn from the views of our members

Response

Since 2009 when Ofcom asked Phonepay Plus [PPP] to regulate the number range 0871/2/3, FCS members have reported that customers have ceased using this number range for their services with many reporting that their customers are migrating away from this number range to others that are not regulated by PPP. A graphic example of this real change is given below.

The reasons cited for this move included the association by members' customers delivering standard business services such as intelligent call routing or fax to email services with premium rate services, which is, or certainly should be the sole activity of PPP. A plumber, whose out of hours calls are delivered to his mobile does not want his reputation tainted by association with sexual entertainment services or confused with horoscopes, tarot readings and similar services which use PRS numbers.

It is clear from PPP reports that there are minimal complaints about 0871 numbers, illustrating a complete lack of consumer harm. In fact, as demonstrated in the recent budget consultation, there were only 91 cases of any regulated activity into 0871/2/3 services from November 2010 to October 2011. From this there were no formal investigations whatsoever, furthermore the vast majority of these 0871/2/3 numbers currently operate at the highest price point of 10 pence per minute whereas any extension of regulation will be to 084 numbers operating at price points as low as 0.5 pence per minute. This clearly demonstrates formal regulation of these new number ranges is simply not justified.

Based on this, together with evidence from industry, we do not support any extension of PPP's role to regulate remaining 08 revenue sharing ranges. Furthermore, we recommend that regulation of 0871 by PPP is removed in its entirety.

We have comments on the specific text of the PPP consultation document that makes many assumptions and our answers to Questions 1-4 follow these comments.

1.4: "An important element of this approach is that any promotion of a revenue-sharing number makes the cost of the service (i.e. the service charge) clear."

Ofcom is likely to propose tariff unbundling in the next NGCS consultation/statement, which will include both access and service charges. Given this, we cannot understand why PPP has considered the access charge to be unimportant in this approach. There appears to be no obligation to make the access charge clear. Evidence needs to be provided to show how many of the complaints received by PPP, about the cost of calls to 0871 numbers, relate to those made from mobile phones, where call costs are far higher. Calls from mobile phones under the new regime will be those where the access charge is likely to be both punitive and undisclosed and this alone will be the major cause of any consumer dissatisfaction.

1.5 "...to include an obligation on providers to state the service charge in all advertising."

Once again, why has PPP given no thought to the access charge, since this is where most consumer harm could take place? It should also be noted that lower rate service charges are likely to be well below the cost of standard geographic calls, particularly calls out of bundle. Given this, we find it surprising that PPP is even considering this as an obligation. Consumer education would be the first starting point with activities such as "calls to 084 numbers have a maximum service charge of 5 pence per minute". These types of activity are best managed by Ofcom as part of the migration into a new unbundled regime.

2.9 "400 complaints around a lack of suitable pricing information and being delayed on a call while being held in a queue."

We need to understand:

- What is the breakdown of complaints? i.e. complaints about being held in a queue vs. those relating to lack of suitable price information?
- For the latter, what is the breakdown of complaints about calls originating from mobile handsets vs. fixed line?
- Call queuing is an issue for the contact centre industry and not the telephony sector. As we have argued for many years, the amount of call revenue share earned by a bank (for example) provides no justification for keeping its customers on hold. This is a fallacious argument and one which was dispelled by Ofcom's own research which demonstrated no correlation between call wait times and the number range being used to access services.

2.9 "three formal investigations"

We would like the cost per investigation over the first two years to be disclosed. This seems disproportionate to the harm done.

Once again, reference is made to the complaints about pricing information and undue delay in relation to the 68 informal cases. What is the breakdown between the two types of complaint?

2.10 "There are considerably fewer complaints on consumer forums..."

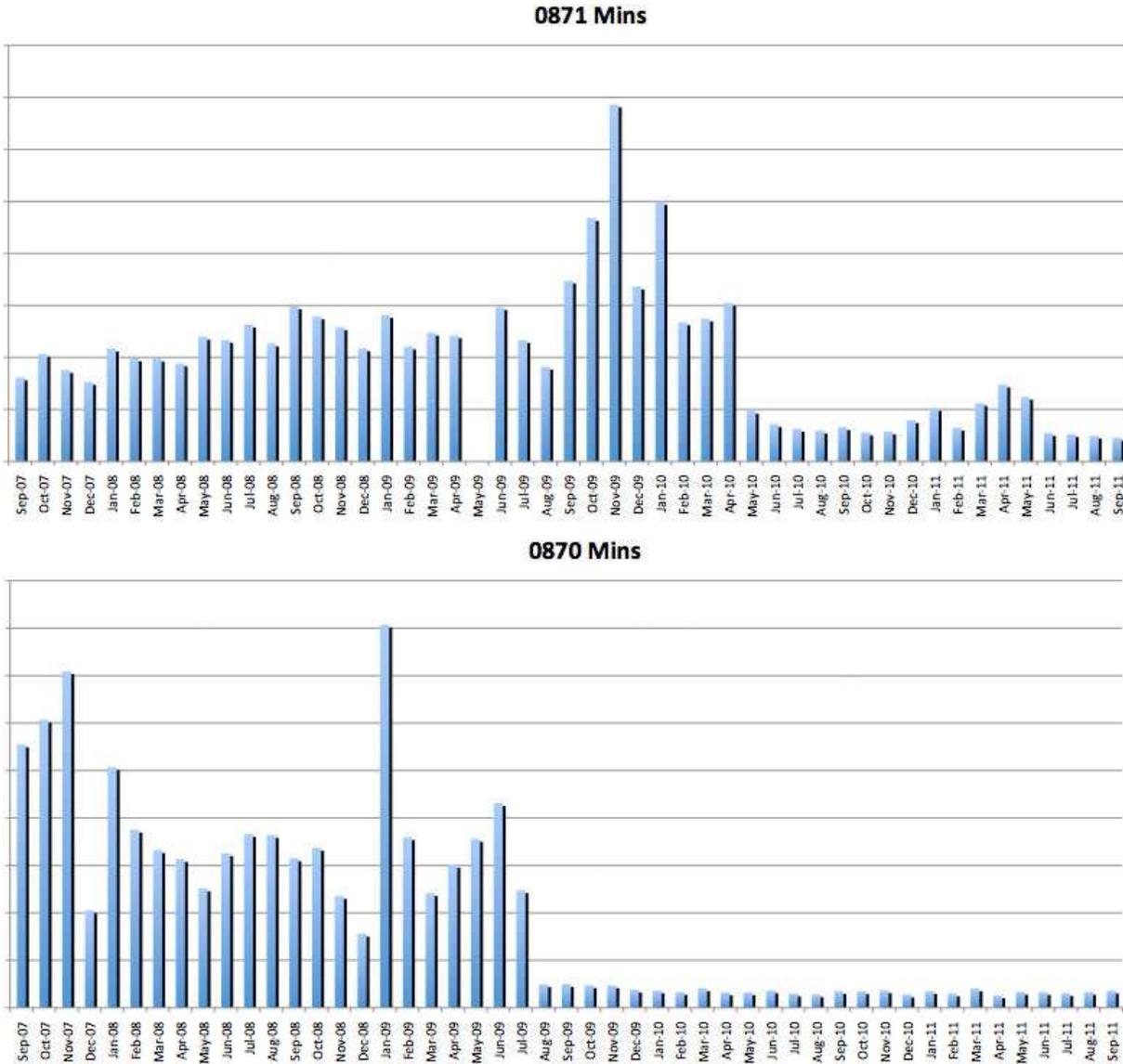
Consumer forums should not be used by a regulator to form benchmarks of consumer behaviour. This is a dangerous approach due to the very small amount of consumers who actually post on these forums. However, the very limited feedback that a forum can provide does appear to make this statement logical. Of course there will be a direct correlation between the number of complaints on consumer forums and the volume of calls being made to 0871 numbers. Since evidence from our members indicates major migration away from 0871 ranges, forum complaints should decrease in similar proportions. If the reduction is any less than this, price transparency has not improved post-regulation.

Once again, it would be beneficial to understand the nature of these consumer forum complaints and the volume which relate to the lack of transparency of the cost of calls made from mobile phones (which may be "considerably higher").

2.11 "The market for services provided on the 087x range has remained stable..."

What evidence has been provided to support this claim? In fact the evidence collated for the NGCS review does not reflect this statement whatsoever. We do agree that 0871 may have seen a spike in volume due to the regulatory change to the 0870 range where there was considerable migration but this was only short lived. This spike has caused a distortion leading

PPP to believe the market has remained stable. Clearly this is not the case and this can be demonstrated by evidence from an FCS member which shows the decline in 0870 usage from August 2009, when revenue sharing was removed, and minute volumes for calls to 0871 numbers from May 2010 (absolute volumes removed for commercial confidentiality). This picture is replicated throughout the industry.



3.4 Outcome 2 and 3 are impossible to achieve since:

- Access charges would **have to be** displayed if "consumers... are [to be] fully and clearly informed of **all** information likely to influence the decision to purchase, including the cost, before any decision to purchase is made."
- Fair and equitable is not possible with the huge price disparity between an unregulated mobile access charge and that likely to exist in the fixed line sector.

4.4 "...regulation is more likely to improve... consumer confidence..."

This is simplistic and ignores the impact of regulation that will inevitably result in lower usage by CPs' customers, evidenced in the 0870 / 0871 graphs above. What will follow is a consequential reduction in call volumes that will outweigh any increase in consumer confidence. We would contest that there is greater awareness of the cost of calls to 0871 numbers, particularly relating to calls from mobile phones since the introduction of PPP regulation. This has been demonstrated by Ofcom citing "our main concerns stem from the way the retail level operates" as one of the key reasons for the NGCS review.

4.6 "We have seen no evidence of either consumers or providers withdrawing from the market because of concerns around association with premium rate."

There has been migration from 0870 to 0871, since this was one of only two viable alternatives for former 0870 customers. This has caused an artificial inflation of 0871 usage during the first 9 months that is now receding. This would not be the case if other 084 numbers are brought under PPP regulation since there is really nowhere else for these service providers to go unless they wanted to change number altogether. We would not expect a responsible regulator to force this unnecessary expense on industry.

4.7 "...we would be willing to consider options with industry for how 08xx services, including 0870, could be branded differently..."

We don't wish to consider options for branding differently. As stated, we would prefer that PPP does not regulate 08 numbers at all (including 0871).

4.8 "Drawing on our experience with 087x services..."

The experience of CPs (as evidenced above) would indicate that the regulatory regime is not only disproportionate, but simply hasn't worked. Price awareness of 0871 has not improved amongst consumers and CPs have reported significant reduction in the volume of 0871 numbers being allocated to their customers and a huge decline in inbound minutes reported.

Question 1: Do you consider that PhonepayPlus' consumer protection rules are appropriate for the lower-cost revenue-sharing ranges if they were to be administered by PhonepayPlus? If not, why not? Please supply any evidence that supports your claim.

We do not believe the consumer protection rules apply and we have not been presented with evidence for their need. In the absence of detailed statistics demonstrating harm caused by lack of price information for 0871 calls, as opposed to call wait times, etc, or meaningful data illustrating how PPP regulation has helped consumers, we see neither requirement nor justification to extend PPP regulation to other 08 ranges. Conversely, we believe PPP regulation should be removed for 0871 numbers.

Evidence provided by our members demonstrates a significant and clearly identifiable decline in 0871 inbound call minutes which is directly attributable to the introduction of 0871 regulation by PPP. An unquantified, but perhaps corresponding reduction in the number of complaints posted on consumer forums relating to 0871 numbers appears to be the only evidence PPP presents to support the success of its 0871 regulation. This reduction should correlate closely to the number of 0871 allocations by CPs to their customers and 0871 call volumes. Our own evidence (above) clearly supports the case for not extending PPP regulation to any other 08 ranges and indeed for its removal in relation to 0871 numbers.

Question 2: In the event of the lower-cost 08xx revenue-sharing ranges being subject to PhonepayPlus regulation, do you consider it would be necessary to modify the branding or presentation of this regulation? If so, what changes would you consider to be necessary?

We do not want, nor do we believe there to be a requirement for lower-cost 08xx numbers to be regulated by PhonepayPlus. For this reason we offer no advice on branding / presentation of the regulation.

Question 3: We discuss the appropriateness the application of the existing PhonepayPlus rules to the remaining 08xx ranges in Section 3. Do you have any comments on the potential additional regulatory burden that inclusion of a low-cost number range in the PhonepayPlus regulatory controls might impose, and how we can ensure it is proportionate to the risks identified in Section 3?

The evidence in the graphs above clearly demonstrates the impact of the regulatory burden on the uptake of numbers and corresponding call volumes following the 0870 regulation in 2009 and 0871 regulation in 2010. Our view is that, irrespective of how "light touch" PPP believes its regulation to be, this is not a view which is shared by users of these number ranges.

In the absence of any meaningful data demonstrating harm inflicted on users of these numbers, we see no justification for the extension of this regulation to 08xx numbers. Beyond the clear detriment caused by high charges for access to 08xx numbers from mobile phones, which does not appear to be being tackled by Ofcom's proposals for an uncapped access charge, or its absence from the price information which PPP suggests is presented to consumers, little evidence of consumer harm has been provided. For this reason, the introduction of any regulation would be disproportionate to the potential risks.

Question 4: Do you have any views on whether the current levy approach would be appropriate for the low-cost revenue-sharing ranges?

This appears to ignore the important concept of "polluter pays". The potential for risk from 08 numbers is significantly lower than that for other PRS numbers and mobile short code services, yet the contribution to the levy remains the same and is therefore disproportionate. We see this as fundamentally wrong as demonstrated in the table below.

Out payment per sector 2010/11

2010/11	Landline	Mobile	DQ	0871	Payforit	Total
Q1	£45,266,859	£55,439,992	£37,262,249	£18,401,667	£3,380,214	£159,750,980
Q2	£41,941,108	£54,682,718	£38,047,101	£18,149,041	£3,625,628	£156,445,595
Q3	£46,203,416	£58,477,774	£36,546,182	£17,095,403	£3,878,279	£164,970,713
Q4	£40,456,883	£58,515,164	£30,524,150	£16,616,640	£5,980,575	£153,812,340
Annual	£173,877,266	£227,115,647	£142,379,680	£70,262,751	£16,864,696	£630,500,040
% Of Total	27.5%	36%	22.5%	11%	3%	100%

Here we can clearly see that 0871 and DQ services account for 33.5% of the deemed PRS market from which the levy is collected. Interestingly PPP reports in its budget consultation that it received 6075 complaints during 2011, from this 1073 or 18% related to fixed services and 5002 or 82% related to mobile services and yet over 60% of the levy is collected from fixed services.

This clearly demonstrates that PPP collects the levy in a disproportionate manner that is unfair to industry. It certainly does not reflect a “polluter pays” principle that PPP so often cites as its ethos.

In the unlikely event that PPP should regulate all 08 services then the outpayments per sector would increase considerably for 08 services. This could mean that over 90% of the levy is collected from fixed services should the levy be collected on a notional revenue basis as it is for 0871 today.

Clearly PPP should concentrate its efforts on protecting consumers from harm caused by rogue PRS or short code services and this is where the funding for PPP should be concentrated. Requiring CPs that provide 0871 services today, or CPs that will be new to PPP, that provide customer service lines etc on low value 08 numbers to contribute to the cost of providing regulation for mobile CPs where over 80% of complaints come from is simply absurd.

Conclusion

The FCS and its members strongly believe that 0871 regulation by PPP is not necessary and should be removed at the first opportunity.

Furthermore we are convinced that regulation of all 08 numbers by PPP will only result in disaster for the industry due to the cost involved through forced number changes on CPs, for businesses that wish to have no association with PRS, and to the consumer that will be further dissuaded from calling 08 numbers through association with them being premium rate.

For those businesses that wish to migrate to other number ranges where there would be no association with PRS then there will only remain two options, firstly the 03 range, that to date has seen little success in its uptake or secondly to geographic number ranges. Businesses using 01/02 number ranges for marketing purposes is already becoming very evident with many using individual numbers for each advert per area to measure effectiveness. This is already creating a strain on the numbering resource and we are sure that PPP are aware that geographic numbers are not a limitless entity. Further regulation by PPP to all 08 ranges will only exacerbate this problem and this is in stark contrast to Ofcom’s objectives in conserving geographic numbers. This alone is a crucial consideration and certainly PPP should take no risks to create unnecessary demands on a fast diminishing resource.

With the advent of a new unbundled regime and if Ofcom do decide that a form of regulation is required for low value 08 numbers then the first steps should be to study the options of regulation through a modification to a General Condition or even a voluntary code of practice. This would alleviate the genuine and valid concerns of involving PPP. Only after a suitable time period where it can be demonstrated that market failures have occurred should any form of more formal regulation should be considered.

It is certainly unacceptable for PPP to request, or accept to be involved, in any changes in regulation that will directly increase their own income where no evidence in increased consumer harm has been presented.